being $70 per mensem, does not exceed $1,200 per year or exceed $100 per month, the Sessions Court was not lacking in jurisdiction by virtue of the provisions of sub-section (3) on this account.

But as I have already said by adding a claim for $574.60 in respect of arrears of rates to a claim for arrears of rent amounting to $980, thereby bringing the money claim to a figure of $1,554.60, the action is taken out of the jurisdiction of the Sessions Court by virtue of sub-section (3) of section 70 of the Ordinance, and therefore the whole of the proceedings are a nullity. The appeal is accordingly allowed with costs.

Appeal allowed.

Solicitors: *Lovelace & Hastings; Kam Woon Wah & Co.*

Re KANAPATHIPILLAI & ORS.

[R. Cr. J. (Adams J.) April 29, 1960]

[Kuala Lumpur — Criminal Revisions Nos. 1 - 10 of 1960]

Road Traffic — Endorsement on licence — Disqualification — "Special reasons" — Test to be applied — Facts of each case to be considered.

Magistrates must appreciate that where there is a duty to disqualify a convicted person from holding a licence to drive a motor vehicle or to endorse such a licence with particulars of a conviction, such duty falls not within the discretion of the convicting court but is imposed by the act of the Legislature. This duty is not identified with the maximum punishment to be mitigated according to established principles. The duty is mandatory but the act of the Legislature has given a limited discretion to a convicting court, to be exercised judicially, to refrain from implementing the law's clearly expressed requirement for a reason which is special to the offence but not for a reason special to the offender.

The test to be applied in relation to those sections of the Road Traffic Ordinance which provide, on conviction of an offender, for particulars of conviction to be endorsed on the defendant's driving licence unless for any special reason the Court thinks fit to order otherwise or to order that an offender on conviction should be disqualified for a period for holding or obtaining a driving licence unless for special reason the Court thinks fit to order otherwise, is:

"A 'special reason' within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the Court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a 'special reason' within the exception."

Cases referred to:—

(1) *Whittal* v. *Kirkby* [1947] 1 K.B. at p. 201.
(2) *R.* v. *Crossan* [1939] N.I. 106.
(3) *R.* v. *Recorder of Leicester, Ex parte Gabbitas* [1946] 1 All E.R. 615.
(4) *R* .v. *Lim Kean Soo* [1950] M.L.J. 181.
(5) *Public Prosecutor* v. *M. Karthiah* [1953] M.L.J. 52.
(6) *Public Prosecutor* v. *Mohd. Jee* [1953] M.L.J. 54.
(7) *In re A. Simon* [1954] M.L.J. 166.
(8) *Knowler* v. *Rennison* [1947] 1 K.B. 488.
(9) *Labrum* v. *Wilkinson* [1947] 1 K.B. 816.
(10) *Lyons* v. *May* [1948] 2 All E.R. 1062.
(11) *Reay* v. *Young* [1949] 1 All E.R. 1102.
(12) *Duck* v. *Peacock* [1949] 1 All E.R. 318.
(13) *Chapman* v. *O'Hagan* [1949] 2 All E.R. 690.
(14) *Jowett-Shooter* v. *Franklin* [1949] 2 All E.R. 730.
(15) *Public Prosecutor* v. *Chiam Liang Kee* [1960] M.L.J. 163.

CRIMINAL REVISION

Cur. Adv. Vult.

Adams J.: This matter was one of 10 Summons Cases brought to my attention by the learned Deputy Public Prosecutor. In all these cases the respondents had either pleaded guilty or had been convicted of the offences of driving a motor vehicle on the public road without due care and attention or without reasonable consideration for persons using the road under Section 36 of the Road Traffic Ordinance (49/58). In no case however did the learned Magistrate order the endorsement of the defendant's driving licence nor did he state what the special reason was which led him not to order the endorsement of driving licence.

It seems that Magistrates have some difficulty in appreciating what the phrase "unless for any special reason" means in relation to those sections of the Road Traffic Ordinance which provide, on conviction of an offender, for particulars of the conviction to be endorsed on the defendants driving licence unless for any special reason the court thinks fit to order otherwise or to order that an offender on conviction shall be disqualified for a period from holding or obtaining a driving licence unless for special reason the court thinks fit to order otherwise. It is most important that the meaning of this phrase should be properly understood. Not only does it appear under Section 36 but also in Section 37 in relation to disqualification after conviction for driving while under the influence of drink or drugs; in Section 38 in relation to a second or subsequent conviction for an offence of being in charge of a motor vehicle whilst under the influence of drink or drugs; and under Section 74(2) in relation to offences of driving a motor vehicle without the vehicle being insured against third party risks.

Magistrates must appreciate that where there is a duty to disqualify a convicted person from holding a licence to drive a motor vehicle or to endorse such a licence with particulars of a conviction, such duty falls not within the discretion of the convicting court but is imposed by the act of the Legislature. This duty is not identified with the maximum punishment to be mitigated according to established principles. The duty is mandatory but the act of the Legislature has given a limited discretion to a convicting court, to be exercised judicially, to refrain from implementing the law's clearly expressed requirement for a reason which is special to the offence but not for a reason special to the offender.

In *Whittal* v. *Kirkby*(1) the Court of Criminal Appeal adopted the test applied in the Northern Ireland case of *R.* v. *Crossan*(2) as to what in law

amounted to a special reason. This test is as follows:—

"A 'special reason' within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a 'special reason' within the exception."

It follows from this that this limited discretion can never in any circumstances be exercised for a general reason since "special" is the antithesis of general. The fact that a person is a first offender or that he has not committed a motoring offence for many years are therefore reasons of the most general character and cannot be special reasons. The fact that a person is required to drive for his livelihood or requires his vehicle for his business is not a special reason because it is special to the offender and not to the offence.

What facts constitute a special reason is a matter of law. If the court exercises its power of not endorsing or not suspending a licence for special reasons, the court must state what the special reasons are which leads the court to exercise it. This was decided in *R.* v. *Recorder of Leicester, Ex parte Gabbitas*[3]. The facts of each case must be carefully considered and then if the Magistrate considers that there are facts which are special to the facts of the case he can if he so wishes exercise the limited discretion that was given to him. It is impossible to lay down anything more specific because the facts which may constitute facts that are special to the offence must necessarily vary in every case.

In *Whittal* v. *Kirkby, supra* Lord Goddard said:

"It is difficult indeed to visualize any special reason in the case of dangerous driving, except the one actually mentioned in the section itself, namely, the lapse of time from the date of a previous conviction. So, too, it is certainly difficult to visualize what could amount to a special reason in the case of driving under the influence of drink or drugs, though perhaps one might be found if the court was satisfied that a drug had been administered to a driver without his knowledge, as for instance where a driver had taken a dose of medicine which he believed to be an ordinary tonic but which in fact contained a powerful drug."

Whittal v. *Kirkby* has been followed ever since and was followed in this country in: *R.* v. *Lim Kean Soo*[4]; *Public Prosecutor* v. *M. Karthiah*[5]; *Public Prosecutor* v. *Mohd. Jee*[6]; *In re A. Simon*[7] and it may perhaps help to consider the facts of some of the English cases and see how the courts have applied the test in *Whittal* v. *Kirkby*.

In *Knowler* v. *Rennison*[8] the defendant was riding on the pillion of his motor cycle which was being driven by his friend who had previously owned a motor cycle but who had sold it shortly before. The defendant himself held a policy of insurance but it did not cover third party risks when his motor cycle was being driven by another person. The defendant honestly believed that his friend had kept his insurance policy in force and that the user of the cycle therefore was covered by either his own or his friend's insurance policy. The Court of Criminal Appeal held that a belief however honest cannot be regarded a special reason unless it is based on reasonable grounds and if an owner of a motor cycle who does not understand his policy of insurance neither informs himself of its provisions nor gets advice, he has not reasonable grounds for believing that it covers something which it does not cover. It was also held in that case that the fact that the defendant had probably "learnt his lesson" and was therefore unlikely to drive again uninsured and that therefore the safety of the public would not be prejudiced by allowing him to continue to drive was not a special reason in itself although it might be taken into account by the Court when deciding, having found facts amounting to a special reason, whether or not to exercise the discretion. These facts can be distinguished from the facts in *Labrum* v. *Wilkinson*[9]. This was also a case of driving whilst uninsured. But in Labrum's case the Court held that the fact that the respondent had been misled by his Insurance Co. in believing that he was covered in respect to third party risks was a special reason entitling the Magistrates to exercise their discretion not to disqualify the defendant. Lord Goddard said:—

"If an ignorant man who has a motor cycle gets a policy and is puzzled by its terms and he goes to some person who it would be reasonable to suppose would be able to give him proper information about the effect of the policy and that person gives him advice which turns out to be wrong, nothing that I said in *Knowler* v. *Rennison (supra)* was intended to cover that sort of case. That might be an excuse. In *Knowler* v. *Rennison (supra)* the assured had made no inquiry. He had taken out a policy which covered the use of his motor cycle while he himself and no other person was driving it. He allowed a friend to drive the motor cycle and there was an accident. In the circumstances the assured was not insured and he said that he had not taken any steps to find out what was the effect of his policy. He had got the policy for which he had applied, and he had no reasonable ground for believing that it would cover the circumstances which actually occurred. In the present case I think there were circumstances which would lead the respondent to think that, having made a proposal for a general cover and having received a cover note giving him a general cover, he would receive a policy providing general cover. He might well be excused for not having read the policy and found out that it had not been issued in accordance with the proposal. In these circumstances I am not prepared to say that there was no evidence on which the recorder could come to the conclusion that there was a special reason in this case why the respondent should not be disqualified under section 35, sub-section 2, of the Road Traffic Act, 1930. I look on this case as an entirely exceptional case, and the fact that it is an exceptional case is a ground for saying that there was a special reason here."

This case was followed in *Lyons* v. *May*[10].

In *Reay* v. *Young*[11] a husband permitted his wife who did not hold a driving licence to drive his car one afternoon along a lonely moorland road where the only other traffic was a motor cycle ridden by a police officer. His wife only drove the car about 150 yards very slowly with her husband in the car. It was held that those

facts constituted at law a special reason, and therefore, as that had been established the Magistrates were entitled to exercise their discretion not to impose upon the owner or his wife the statutory disqualification from holding or obtaining a driving licence.

It might be helpful to consider three further examples. In *Duck* v. *Peacock*[12], the defendant was charged for driving while under the influence of drink to such an extent as to be incapable of having proper control of the vehicle. He was convicted. The facts were that having consumed a certain amount of alcoholic liquor the defendant started to drive home. He felt quite well when he began his journey but on feeling dizzy having been in the open air for some time he realised that he was no longer fit to drive and stopped his car. He fell asleep in the driving seat. The fact that he stopped his car when he realised that he was no longer fit to drive was held by the Court of Criminal Appeal not to be a special reason. Lord Goddard said:

"The respondent obviously was not fit to drive when he left Berkeley Street. The position was simply that the effect of the drink had not fully disclosed itself."

And later in the same judgment:

"If what is suggested here were a special reason it would mean that a man who had taken too much drink so that he was unfit to manage the car or to be in charge of it could escape penalty merely by stopping and going to sleep in the car."

The facts of that case can be contrasted with those in *Chapman* v. *O'Hagan*[13] where a motorist having sustained an injury to his leg took drugs not knowing that he was thereby rendered more susceptible to the effect of alcohol. Later he took the amount of beer and whisky to which he was accustomed. He was convicted of being in charge of a motor vehicle whilst under the influence of drink. The Justices held that his ignorance of the combined effect of the drugs and of alcohol constituted a special reason to enable them to exercise the discretion given to them not to impose the statutory disqualification for 12 months. The Court of Criminal Appeal considered the matter to be a borderline case but since the Justices had properly applied their mind to the law and had not acted perversely, the Court refused to interfere.

In *Jowett-Shooter* v. *Franklin*[14] the respondent drove his car to a dance and not being a dancer took more to drink than was usual. He felt dizzy and left the dance and sat in the passenger seat of his motor car. He had left his hat, coat and gloves in the dance hall and had no intention of driving. He was properly convicted for being drunk in charge of a motor car but the fact that he clearly had no intention of driving and that he was merely resting in the car to obtain fresh air constituted a fact special to the offence and not to the offender and therefore the Magistrates had power to exercise their discretion in not imposing the statutory period of disqualification.

What the Magistrate should have done in the present case having convicted the defendant was to look at the facts and then to have decided if those facts or any of them amounted to a reason special to the offence to enable him to exercise the limited discretion given to him not to order the endorsement of the defendant's driving licence. The High Court will not interfere if the convicting court properly and judicially directs itself on this matter even though the High Court would have decided the matter differently if sitting as a Court of original jurisdiction.

I have considered the facts of this case and I can find nothing in the facts which constitute a special reason to enable a Magistrate to exercise the limited discretion given to him by the Road Traffic Ordinance for not ordering an endorsement.

At the same time I have considered the penalty imposed in this case. I do not propose to interfere with it although I myself would have imposed considerably larger fines. However I would draw the learned Magistrate's attention to the fact that the Legislature has laid down in the Road Traffic Ordinance 1958 various penalties for driving offences. These penalties are in no way trivial. In the case of dangerous driving under Section 35 or driving while under the influence of drinking or drugs under Section 37 a term of imprisonment of not exceeding 6 months or a fine of $1,000 is provided for a first offence. The penalty for careless driving or driving without due care and attention under Section 36 is punishable under Section 146 with imprisonment not exceeding 6 weeks or to a fine not exceeding $200 for a first offence. The very fact that the Legislature has provided imprisonment as well as fine for these offences even for a first offence indicates that the Legislature treats the commission of driving offences as a very serious matter and has considered these penalties necessary in order to protect the lives and property of members of the public who use public roads. Magistrates should realise this fact. Practically every day there are reports of accidents involving life, limb or property. Magistrates are under a duty to enforce the laws promulgated by Parliament for the public's protection properly giving due regard to the gravity of the offence as elicited from the facts of every case.

In conclusion I would with respect associate myself with the remarks of Rigby J. in *Public Prosecutor* v. *Chiam Liang Kee*.[15] The learned Judge in that case said:—

Before concluding this case, I would refer to an address given to Magistrates in England some time ago by the then Lord Chancellor of England in which he said, in referring to the increasing number of road casualties, —and I quote his words — that:—

"These figures should bring home to us the fact that the motorist is in control of a lethal instrument and should lead Magistrates to consider very carefully whether the penalties which they are in the practice of imposing on motorists who handle that instrument in a way which endangers other people are sufficient to impress on the motorist the seriousness of his offence."

He continued:—

"In particular, I would remind you that you have a wide discretionary power to disqualify in cases where the statute itself does not make disqualification automatic."

He went on to say:—

"It has been suggested from time to time in debates both in the House of Lords and in the House of Commons, that this is a power which Magistrates might usefully employ more frequently, since it is disqualification which the motorist fears rather than a fine. Disqualification serves a double purpose, in that it is firstly, the punishment most feared by the motorist and therefore the most effective deterrent, and, secondly, it keeps the careless or dangerous driver off the road for a period and does that practical amount of good."

These are not my words. They are the words of a Lord Chancellor of England. I venture to commend them to Magistrates for their careful consideration and attention.

The conviction and sentence in this case is confirmed but there will be added an order endorsing the licence of the respondent and by virtue of the provisions of the Road Traffic Ordinance Section 32(6) notice of the endorsement of the defendant's licence must be sent by the Court to the Registrar of Motor Vehicles by whom the driving licence was granted.

Conviction confirmed.
Order to indorse the licence.

CHOW SAI LET v. PUBLIC PROSECUTOR

[A. Cr. J. (Smith J.) May 2, 1960]

[Ipoh — Criminal Appeal No. 19 of 1960]

Road Traffic offence — Plea of guilty by post — When acceptable — Road Traffic Ordinance, 1958, ss.74(2) and 147(3).

A person accused of an offence under the Road Traffic Ordinance may plead guilty by post even though the offence has not been prescribed under sub-section (3) of section 147 of the Road Traffic Ordinance as compoundable provided that the punishment for the offence is one of fine only or of imprisonment not exceeding three months.

Disqualification for holding a driving licence is as much a punishment as fine or imprisonment. The Court has no power to accept a plea of guilty by post in respect of an offence punishable under sub-section (2) of section 74 of the Road Traffic Ordinance because the offence is not punishable by fine only or by imprisonment not exceeding three months; it is also punishable by a period of disqualification for holding or obtaining a driving licence.

MAGISTRATE'S CRIMINAL APPEAL.

D. R. Seenivasagam for the appellant.

Abdul Hamid (Deputy Public Prosecutor) for the respondent.

Smith J.: The appellant was charged first with carrying goods without a haulage permit an offence punishable under regulation 7 of the Motor Vehicles Commercial Use Regulations (GN. 30/45), and secondly with driving a vehicle without a policy of insurance in respect of third party risks an offence under sub-section 1 and punishable under sub-section 2 of section 74 of the Road Traffic Ordinance, 1958.

The appellant pleaded guilty to the two offences by letter and was fined $75 on each charge; and in respect of the second charge was disqualified for holding or obtaining a driving licence for a period of twelve months from the date of the conviction. The appellant has appealed against both his conviction and his sentence.

Neither of these offences has been prescribed by the Minister charged with the responsibility for transport as an offence which may be compounded (see section 147) and therefore by virtue of the provisions of sub-section 2 of section 146 there is no provision under the Road Traffic Ordinance for the offender to plead guilty by registered post.

The jurisdiction to accept a plea of guilty by post, if it exists at all, must be by virtue of section 137(ii) of the Criminal Procedure Code which reads:

"In any case relating to an offence punishable by fine only or by imprisonment not exceeding three months and in which a Magistrate has issued a summons, an accused person desiring to plead guilty and be convicted and sentenced in his absence may appear by advocate, or may by letter addressed to the Magistrate plead guilty and submit to pay any fine which may be imposed in respect of such offence and the Magistrate may thereupon record a plea of guilty and convict him according to law, and may sentence him to a fine with or without a sentence of imprisonment in default of payment of such fine."

It has been argued by the Deputy Public Prosecutor that section 137(ii) of the Criminal Procedure Code has no application to offences under the Road Traffic Ordinance since there exists in the Road Traffic Ordinance in sections 146 and 147 special provision for pleading guilty by post to offences against the Ordinance. I find myself unable to agree with this argument. There is nothing in the Road Traffic Ordinance which expressly excludes the operation of section 137(ii) of the Criminal Procedure Code. Indeed, what section 147 of the Road Traffic Ordinance appears to do is to enable the Minister to increase the offences in respect of which the facility of pleading guilty by post already exists under section 137(ii) of the Criminal Procedure Code. There is nothing in the Criminal Procedure Code which says that where provision is made in any Ordinance for a plea of guilty to be made by post then the provisions of section 137(ii) of the Criminal Procedure Code shall not apply. Since pleading guilty by post is an entirely optional course and therefore in the interests of the subject I cannot see that one can read into the Road Traffic Ordinance any implied repeal of section 137(ii) in so far as the right to plead guilty to road traffic offences is concerned. I am therefore satisfied that even though an offence under the Road Traffic Ordinance has not been prescribed under sub-section 3 of section 147 as compoundable nevertheless a plea of guilty may be made by post provided that the punishment for the offence is one of fine only or of imprisonment not exceeding three months.